

# GENERAL TERMS AND CONDITIONS

## Terms & Conditions

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## Terms & Conditions (with legal information)

### § 1 Area of application and Providers

These terms and conditions apply to all orders placed through

Schwaderer GmbH  
Robert-Bosch-Straße 10  
71563 Affalterbach

Phone 07144/899 66 - 0  
Fax 07144/899 66-25  
E-mail [info@schwaderer.com](mailto:info@schwaderer.com)

Managing Director

Mike Schwaderer

Office Court Stuttgart, HRB 271256

VAT registration number. DE 811 872 093

Responsible for content:

Mike Schwaderer (address as above)

You can reach our customer service for questions and complaints Monday to Friday from 07.30 a.m. to 12.00 p.m. and from 12:30 p.m. to 4:00 p.m. by phone: +49 (0) 7144/899 66 - 0 as well as by e-mail: [info@schwaderer.com](mailto:info@schwaderer.com).

1.1 These terms and conditions of sale and delivery apply for all our deliveries and services, as far as the customer is entrepreneur, legal person of public law or public special fund. They shall also apply to all future transactions with the Purchaser, without any explicit indication being required. Contract languages are German and English.

1.2 We shall not recognize the General Terms and Conditions of the Purchaser, in particular Purchasing Conditions, unless we have explicitly consented to their validity in writing. This also applies if we carry out the performance unconditionally in the knowledge of conflicting or deviating terms from the present terms and conditions.

## **§ 2 Conclusion of contract**

2.1 The product presentations on the website are designed to submit a purchase offer. Click *[To Order]* or *[Confirm]* to make a binding purchase offer.

2.2 We can accept your order by sending a separate order confirmation by e-mail or by delivery of the goods. The confirmation receipt of the order is made by automated e-mail immediately after sending the order and does not constitute a contract acceptance.

2.3 The order of the customer is a binding offer. We may accept this offer within 4 weeks by sending an order confirmation or by delivering the ordered goods to the customer within this period.

2.4 The documents such as illustrations, drawings, weight and dimensions, as well as the data in our printed material which are part of the customer's offer, are only definite for us, if they are explicitly acknowledged as binding and accepted by us. Property descriptions, for example in the context of preliminary talks, brochures or advertisement, do not constitute a guarantee of quality or durability without our explicit and binding acceptance.

2.5 We reserve the right to make alterations to technical data and designs due to technical progress.

## **§ 3 Prices**

3.1 The prices stated on the product pages are subject to compulsory value-added tax, other price components as well as shipping costs.

3.2 Our prices are valid ex works excluding packaging and VAT.

3.3 We reserve the right, for contracts with an agreed delivery time of more than 4 months, to increase the prices according to the increased costs occurred due to collective bargaining

agreements or increases in material prices. If the increase is more than 5% of the originally agreed price, the customer has a right of termination. The same applies to call orders.

3.4 The set-off is only permitted with legally binding or recognized counter-claims. The customer can only exercise the right of retention if these are based on the same transaction.

3.5 Errors and mistakes in pricing excepted.

Technical changes or price errors reserved.

#### **§ 4 Shipping costs**

4.1 For packaging and delivery within Germany, we charge a flat rate of EUR 11.50 per package. For more information, see [shipping costs](#) .

#### **§ 5 Terms of delivery and self-supply reservation**

5.1 Delivery within Germany is performed by DHL or forwarding agency.

5.2 The delivery time is 3 to 5 working days, unless stated otherwise in the offer.

5.3 If not all ordered products are in stock, we are entitled to part deliveries at our own expense, as far as this is reasonable for you.

5.4 If the delivery of the goods fails three times due to your fault, we can resign from the contract. If payment took place in advance we will immediately refund it to your account.

5.5 If the ordered product is not available because we are not provided with this product by our suppliers without our own fault, we can withdraw from the contract. In this case, we will inform you without delay and suggest the delivery of a comparable product. If no comparable product is available, or if you do not wish to receive a comparable product, we will refund you any counter-performance already provided.

#### **§ 6 Terms of payment**

6.1 The payment is made in advance or by invoice.

6.2 If you choose the method of payment in advance we will specify our bank account in the order confirmation and preliminary invoice. The invoice amount must be transferred to our account within 10 days otherwise the order will be cancelled.

6.3 If the method of payment is invoice the stated amount must be received no later than 30 calendar days from the date of the invoice or, if the date of receipt of the invoice is uncertain, from receipt of the goods.

6.4 If you are in default of payment, the purchase price shall be interest-bearing during the delay of 9% above the base interest rate. We reserve the right to prove and assert a higher arrears.

6.5 The contractor reserves the right to charge the agreed service by post or electronically to the e-mail address provided.

## **§ 7 Delivery time, acceptance, Risk transfer**

7.1 Delivery dates are not binding if we have not explicitly confirmed them as binding in the written order confirmation. Delivery periods begin with sending the order confirmation. Delivery dates are complied with leaving the factory. Delivery delays in case of force majeure, official measures, etc., or indebted events such as strike, lockout, etc., as well as delays in delivery by our own supplier extend the agreed delivery periods accordingly. If we are in default of delivery, the customer can set an appropriate deadline for the delivery item in each case. After expiry of the deadline, the customer can withdraw from the contract. Compensation for damages instead of the performance is excluded, as long as we are not at fault of the delay of delivery or gross negligence.

7.2 The customer has to accept goods which are ready for delivery. If he does not comply with this obligation, we are entitled to grant him an additional period of two weeks. After the expiration of the deadline, we shall, at our option, withdraw from the contract or refuse to fulfill the contract. In the latter case, our claim for damages is a flat-rate of 15% of the value of the order including VAT, unless we report a higher loss or the customer a lower loss.

7.3 Our deliveries shall be at the customer's risk, regardless of the place from which the shipment takes place, even if, exceptionally, we deliver freight free.

7.4 At the express and written request of the customer, we shall insure the goods to be shipped at his own expense against all transport risks.

7.5 Packaging shall be charged at cost price. Other agreements require our explicit written confirmation. If we are obliged under the Packaging Ordinance to take back the packaging used for transport, the customer bears the costs for the return transport of the used packaging.

## **§ 8 Reservation of Proprietary Provisions**

8.1 All goods delivered by us remain our property up to the settlement of all our claims, regardless of the legal basis. In the case of current invoices, the reserved property shall be considered as collateral for our balances.

8.2 The goods remain our property until full payment. Prior to the transfer of the property, a pledge, security transfer, processing or transformation without our consent is not permitted.

8.3 As long as the customer is not in arrears with us, he may sell the goods in our possession in the normal course of business on normal terms. In order to safeguard all our claims arising from the business relationship, the customer herewith assigns to us his claims from the resale. We accept this assignment.

8.4 Any processing or transformation of goods delivered by us is always made by us. If the goods are processed with other objects which are not our property, we shall acquire the co-ownership of the new item in proportion to the value of our goods to the other processed items at the time of processing.

8.5 We undertake to release the collateral to which we are entitled at the customer's request insofar as the value of our collateral exceeds the claims to be secured by more than 20%.

8.6 The assertion of the retention of title does not constitute a rescission from the contract.

## **§ 9 Warranty**

9.1 The statutory right of deficiency exists for the articles offered by us.

9.2 The customer is obligated to check goods delivered by us immediately, i.e. as a rule at the latest within 7 working days after delivery for defects. This shall also apply in the event that another item has been sent or the quantity is too small. Delayed complaints regularly lead to the exclusion of warranty.

9.3 In the case of approved defects, we shall, at our discretion, make a free elimination of the defect (rectification) or delivery of a defect-free product (subsequent delivery). If a total of 3 rectification or subsequent delivery dates fail, the customer may withdraw from the contract or demand a reduction of the price. The obligation to submit the complaint in accordance with section 1 shall remain in the event of the failure of the supplementary performance.

9.4 Any further claims of the customer, in particular claims for damages, including lost profits or other assets of the customer are excluded. The above stated limitation of liability does not apply if the cause of the damage is based on intent or gross negligence. It shall also not apply if the customer asserts claims for damages as a result of the absence of a guarantee given by us.

9.5 If a contractual duty is negligently violated by us, our liability to the foreseeable damage is limited.

9.6 The warranty period is one year from delivery of the goods.

9.7 Warranty claims are excluded if the defect is due to one of the following causes: unsuitable or improper use, incorrect assembly or commissioning, improper handling, unsuitable operating materials, exchange materials, chemical, electromechanical and electrical influences, influence of third parties. Warranty claims are also excluded if the purchaser undertakes rework, alterations or repairs without giving us the opportunity to rectify the defect or to have obtained our written approval.

9.8 Transport and packing costs of the complained and the reworked goods or replacement delivery shall be at the expense of the customer.

## **§ 10 Revocation right**

10.1 We only sell to entrepreneurs iSd § 14 German Civil Code (BGB). Therefore, there is no right of revocation.

## **§ 11 Shipping Damage**

11. If goods are delivered with obvious damage to transport, please report such faults immediately to the delivery company and please contact us as soon as possible (telephone 07144/899 66 - 0).

## **§ 12 Shortshipment / excess delivery**

12.1 Concerning production reasons, shortshipments / excess deliveries must be accepted for the order quantity as well as for the quantity stated in an order confirmation up to a maximum of 10%. Excess deliveries will be charged at the agreed price. For shortshipments there is NO right to subsequent delivery.

## **§ 13 Copyright**

13.1 In the case of samples submitted by us or the customer, drawings and similar information of physical and non-physical nature, even in electronic form, we reserve the right of property and copyrights; they may not be reproduced, published, modified or used for any purposes other than the agreed upon purpose without our consent or permission from the copyright owner.

## **§ 14 General, Place of Performance, Jurisdiction, Applicable Law**

14.1 The foregoing provisions fully reflect the agreements made. There are no side agreements. Amendments and additions must be made in writing. This also applies on changes of the written form clause.

14.2 The invalidity of individual provisions shall not affect the effectiveness of the other regulations. The intention is to replace the ineffective provision. Both parties obligate to deliver the insofar needed declaration of intention.

14.3 The place of performance for all contractual obligations is Affalterbach.

14.4 Jurisdiction for merchants, legal persons of public law, or public-law special funds the place of fulfillment is Affalterbach.

14.5 The law of the Federal Republic of Germany shall apply exclusively to the permitted extent.

## **§ 15 Final provisions**

Should any provision of these General Terms and Conditions be invalid, the remaining provisions shall remain valid. The relevant legal provisions shall apply instead of the invalid provision.